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Situation of human rights in the Democratic People's Republic of Korea

Note by the Secretary-General**

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea, Vitit Muntarbhorn.

* A/63/150 and Corr.1.
** The present report was submitted after the deadline so as to include the most recent information.

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Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea

Summary

The present report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea covers the period from 2007 to mid-2008. The Special Rapporteur expresses his appreciation for and gratitude to the various agencies and organizations that provided some of the information used in the present report, including United Nations agencies, non-governmental organizations and other sources.

The Democratic People's Republic of Korea was often in the news during the year owing to the nuclear issue, which was dealt with under the umbrella of the six-party talks (between the country in question, China, Japan, the Republic of Korea, the Russian Federation and the United States of America). Those talks provided an avenue to address some of the key human rights issues covered by this report and created more opportunities in a variety of settings to deal with various key humanitarian matters between the parties.

The human rights situation in the Democratic People's Republic of Korea remains grave in a number of key areas. This report examines the situation from the following perspectives, in particular, human rights and the development process: the inequity factor; access to food and other necessities: the disparity factor; rights and freedoms: the insecurity factor; displacement and asylum: the (im)mobility factor; groups of special concern: the inequality factor; consequences of violence and violations: the impunity factor.

While much depends upon global and local political will to test the Democratic People's Republic of Korea for transparency and responsibility, whether through softer or harder entry points, that is, graduated measures, it is important to underline the long-standing and systematic nature of human rights transgressions in the country, which are highly visible, substantial and exponential. The report ends with a variety of recommendations, both short-term and longer-term, addressed to the Democratic People's Republic of Korea and to the rest of the international community, including the need to abide by international human rights standards and the need for the country to engage with the United Nations system on human rights to ensure improvement of the protection of human rights at the national and local levels.

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I. Introduction

1. The mandate of the Special Rapporteur was established by the Commission on Human Rights in 2004. It entails assessment of the human rights situation in the Democratic People's Republic of Korea. The present report of the Special Rapporteur covers the situation from 2007 to the middle of 2008; it provides an update to the information submitted in the 2008 report of the Special Rapporteur (A/HRC/7/20) to the Human Rights Council. In 2007-2008, the Special Rapporteur made visits to Japan, Mongolia and the Republic of Korea to assess the impact of the human rights situation in the Democratic People's Republic of Korea on those three countries. The reports of those visits were integrated into the report of the Special Rapporteur to the Human Rights Council in early 2008.

2. The approach of the Special Rapporteur is to continue to invite the Democratic People's Republic of Korea to respond to the mandate as an opportunity to engage with the United Nations. It is thus regrettable that, to date, the authorities of the country have declined to cooperate with him and that they have not replied constructively to his communications on cases relating to human rights violations.

3. The Democratic People's Republic of Korea is a party to four human rights treaties: the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. The Government has submitted reports under those treaties and has appeared before the various monitoring bodies established thereunder. Recently, it submitted another report to the Committee on the Rights of the Child (CRC/C/PRK/4). Second, the Democratic People's Republic of Korea is in the process of reforming its laws on narcotics control and money-laundering, and has become a party to the Single Convention on Narcotic Drugs (1961), the Convention on Psychotropic Substances (1971) and the Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988). The International Narcotics Control Board was invited to visit the country recently, thus implying a greater degree of openness by the authorities. Third, following devastating floods in August 2007, the Government has allowed humanitarian agencies greater access to the counties affected, and various sources indicate that the authorities have cooperated relatively well with United Nations and other agencies in food distribution and provision of assistance to needy groups.

4. On another front, the progress of the six-party talks (between six countries aimed at denuclearizing the Korean peninsula), particularly the February 2007 agreement to disable the controversial nuclear plant in the Democratic People's Republic of Korea, should be welcomed and further consolidated. More progress was made in October 2007 with the six-party agreement on second-phase actions for the implementation of the joint statement of 19 September 2005. The latter opened the door to a variety of measures, including agreement by the Government to provide a complete and correct declaration of all its nuclear programmes and to disable all existing nuclear facilities at Yongbyong by the end of the year. In July 2008, the Government agreed to disable its principal nuclear facilities by the end of October and to allow on-site inspections as part of the verification process. A cooling tower related to the nuclear reactor at Yongbyong was subsequently demolished. The agreement was that that would be done in return for international aid, especially much needed fuel. Another key development in mid-2008 was the

resumption of talks between the Democratic People's Republic of Korea and Japan in regard to Japanese nationals abducted by the former, aimed at reopening investigations on unresolved cases. Another positive development was the accession by the Democratic People's Republic of Korea to a non-aggression pact with the Association of Southeast Asian Nations in July 2008.

II. Situation

5. The human rights situation in the Democratic People's Republic of Korea remains grave, and as a testament to this, the General Assembly passed another resolution (62/167), in which it expressed its very serious concern at the human rights record of the country at the end of 2007, requested the Secretary-General to submit a comprehensive report on the human rights situation in the Democratic People's Republic of Korea and requested the Special Rapporteur to continue to report on his findings and recommendations. In March 2008, the Human Rights Council voted to extend the mandate of the Special Rapporteur for one year. The continuing negative situation in the country can be analysed from the perspectives described in the sections below.

A. Human rights and the development process: the inequity factor

6. There is a paucity of data on the development process in the country, which has a population of some 23 million (recent data on the development process can be found at http://ddp-ext.worldbank.org/ext/ddpreports/ViewSharedReport?&CF=1&REPORT_ID=9147&REQUEST_TYPE=VIEWADVANCED&HF=N&WSP=N).

7. According to The Economic Research Institute for Northeast Asia, the Library of Congress and other sources, the country's negative growth started in 1990 and continued for nine years, with per capita national income falling from an estimated $1,013 in 1992 to $573 in 1998. The economy recovered slightly starting in 1999, and the estimated per capita national income in 2004 was estimated at $914.[1] Growth has been mainly in the mining and manufacturing sectors. The gross domestic product growth rate was estimated at 1 per cent per annum in 2006.[2]

8. There has consistently been a trade deficit facing the country. For instance, exports for 2004 totalled $1.28 billion, while imports reached $2.28 billion, with a trade deficit of $1 billion.[1] External debts were estimated to be some $12 billion in 1996, owed mainly to immediate neighbours.[2]

9. The development process is marked by a lack of equity, owing to the highly stratified political structure; the elite do well, while the rest are left at the margins of the development process. The inequitable development pattern is propelled by a centrally planned economy and is characterized by an ideology-steeped top-down and isolationist approach. The country is driven by a non-democratic structure with an entrenched hierarchy interested in self-preservation, which distorts the budget and other allocations in favour of the ruling elite. There is also a clandestine economy from which the powers-that-be benefit. There is no genuine participation

[1] North-East Asia Economic Databook 2005, chap. 5 (www.erina.or/jp/en/Publications/databook/index.htm).

[2] Library of Congress, Federal Research Division, County Profile: North Korea, July 2007.

by the people, which is a key determinant of sustainable development advocated by the international community. Those who are regarded as dissidents are marginalized, discriminated against and persecuted. The gap between the haves and the have-nots is on the increase, as seen in the food situation described below, and the country suffers from a lack of distribution of resources and political power, which undermines the potential for human development.

10. In 2004, the national expenditure budget was some 351 billion won, with military expenditure at 15.6 per cent, allocations for the people's economy at 41.3 per cent, social and cultural sector allocations at 40.8 per cent and administrative expenditure at 2.3 per cent.[1] The share of military expenditure, direct and indirect, is more than meets the eye and is described in the following paragraphs.

11. According to the Economic Research Institute for Northeast Asia, while the military expenditure burden may seem light, the share of the people's economy accounted for by the Government sector is immense, and in addition to spending from the national budget, a separate organization called the Second Economic Committee has control of military expenditures, so it is thought that the proportion of military expenditure in the economy of the Democratic People's Republic of Korea is extremely large, and it would be no exaggeration to say that that is acting as a drag on economic recovery.[1]

12. Moreover, the country adheres to a so-called military first policy, with millions involved in the military and in military industry. That depletes the resources of the country in favour of militarization, in the face of many shortages and deprivations suffered by the population. It is estimated that the armed forces total over 1 million armed personnel, with another 7.7 million in the reserve component.[2]

13. It may be recalled that, in 2006, the militarization drive was manifested by various missile and nuclear tests carried out by the authorities, which were condemned by the international community. Those acts undermined the possibility of aid from other countries which reconsidered their contributions. While the six-party talks have progressed gradually on the denuclearization front, the parallel issue of overall demilitarization and a shift from a pro-military budget to a pro-people budget has not yet been addressed.

14. The economic crisis faced by the country is manifest in the rampant shortages of food and other basic necessities referred to below, particularly since the mid-1990s. The social security framework, on which the country prided itself as part of a socialist system, is now in serious decline.

15. According to a white paper on human rights in North Korea issued in 2007 by the Korea Institute for National Unification, a large portion of the North's social security system was essentially abolished with the implementation of the economic management improvement measures of 1 July 2002. Under those measures, the Government in effect gave up on supplying food, clothing and housing to its people. Owing to the conflicts and contradictions inherent in the welfare payment burdens stipulated in the State social insurance and State social security, the Government was hamstrung, and the subscribers (the citizens) had to rely exclusively on their income from work. As a result, the social safety net [the country] aspired to build largely lost its function and meaning. As a result of the July 2002 measures, the prices of daily essentials, including the price of grains, rose sharply, along with various so-called tax burdens such as apartment rents, electric bills, education tax

and transportation costs. Since the economic situation has not improved at the same rate, overall purchasing power has deteriorated considerably. For large families and people relying on their pensions, the financial squeeze has been more painful.[3]

16. Beyond the elite, people are faced with a painful paradox: on the one hand, the social safety nets that the State offered in the past are no longer reliable and the people must seek other ways to fend for themselves; on the other hand, when the people undertake various livelihood initiatives to supplement their income, the authorities clampdown on them for fear of losing their grip on the population. One of the current quandaries is the range of new laws and regulations regulating the markets, which have grown in recent years as part of the decline of State social security and as part of the experiment with the market economy. Recent regulations prohibit those under 50 years of age from trading and forbid the sale of goods outside the market building, while public officials patrol markets to suppress the activity of various traders and confiscate their wares.[4] It has been reported that the National Intelligence Agency and police stations in Pyongyang have begun to impose control over the market by checking people and their bags as they enter and leave public transport and markets.

17. The national census is to be undertaken with the support of the United Nations Population Fund. That will not only enable the collection of the most recent data on demography, but will also act as a significant basis for development programming, needs assessment and related responses.

B. Access to food and other necessities: the disparity factor

18. There is a great disparity between access by the elite to food and other necessities and access by the rest of the population to such items. Owing partly to natural disasters and partly to mismanagement on the part of the authorities, there has been a chronic food shortage since the mid-1990s affecting the general population beyond the elite. Then and now, the latter usually have first choice of whatever provisions are available.

19. The country then started to accept food aid from outside the country, particularly through the World Food Programme (WFP). In 2005-2006, the authorities demanded from the international presence a shift from humanitarian aid to a more development-oriented framework, and in the process scaled down the presence of various foreign humanitarian agencies in the country. One indirect consequence was that monitoring of aid coming into the country was reduced. While the 2005 harvest was a welcome improvement over the harvest of previous years, in mid-2006, major floods wreaked havoc on the harvest, resulting in a severe food shortfall. That was compounded by the decline of medical services and a shortage of medicines, fertilizers, electricity, and, in some areas, water. The Food and Agriculture Organization of the United Nations (FAO) estimated a cereals shortfall of some 890,000 metric tons for the period 2005-2006, and over 1 million metric tons for 2007. For more information on the food security situation access the FAO

[3] See "White Paper on human rights in North Korea 2007", Korea Institute for National Unification (Seoul, 2007).

[4] *North Korea Today*, Research Institute for North Korean Society, No. 103 (December 2007).

website at http://www.fao.org/faostat/foodsecurity/MDG/EN/KoreaDPR_e.pdf, http://www.fao.org/faostat/foodsecurity/Countries/EN/KoreaDPR_e.pdf.

20. In 2006, WFP began its two-year Protracted Relief and Recovery Operation, to provide 1.9 million people with food aid at a cost of $102 million, and providing 150,000 tons of commodities, principally targeting women and young children.

21. Severe flooding in the country in August 2007 worsened the situation, with nearly 1 million people affected by deprivations.[5] The emergency response was positive and the aid targets of some $14 million for the flash flood appeal were attained.

22. However, in 2008, it became evident that the food shortage was more serious than anticipated, with reports that millions of people in the country were facing severe deprivations not seen since the mid-1990s (see www.wfp.org and *North Korea Today*, June/July 2008). A new agreement was reached between the authorities and WFP to assist 6.5 million people. The latter had access to 131 counties (50 more than in 2007) and the authorities promised more international staff visas. WFP reported access to a number of households and county warehouses that had previously been inaccessible. In mid-2008, WFP was in fact able to reach around 3.7 million people. The United Nations Children's Fund also regained access to three key northern provinces and the opportunity to carry out more activities with more staff. Some 400,000 metric tons of food aid from the United States of America started to arrive in June 2008. WFP estimated that it would need aid equivalent to some $500 million for the next two years to respond to its expanded programme in view of the critical food situation.

23. WFP and FAO carried out an important food security assessment in June 2008 on the basis of visits to 53 counties in 8 provinces, conducting 375 detailed interviews with urban and rural families and care providers. It was thus the broadest survey since 2004. The initial findings revealed the following disquieting features, as reported by WFP in June and July 2008, below.

(a) Declining food availability in the Democratic People's Republic of Korea owing to:

(i) Reduced agricultural production for two consecutive years;

(ii) Reduced imports, commercial and food aid since 2005;

(iii) Fewer in-country transfers owing to transport constraints and more restrictions on market trade;

(iv) Soaring global food prices;

(b) Deteriorating food accessibility:

(i) Owing to low in-country transfers caused by fuel and transport constraints; skyrocketing market food prices (i.e., a threefold increase in the price of rice and a fourfold increase in the price of maize);

(ii) cuts in public distribution (officially reported at 150 grams per person per day, one third of the normal ration);

[5] See Office for the Coordination of Humanitarian Affairs, Situation Report No. 7 (10 September 2007) and World Food Programme Democratic People's Republic of Korea, Rapid Assessment Report (August 2007).

(c) Deteriorating food consumption and dietary diversity:

(i) close to three quarters of households have reduced food intake;

(ii) more than half are eating only two meals per day;

(iii) two thirds have poor dietary diversity (mainly maize, vegetables, wild food and small amounts of oil.

24. Particularly worrying is the finding that the cases of children affected by diarrhoea have increased markedly, to nearly twice the number recorded in the previous Government/United Nations nutritional survey in 2004. Child malnutrition and illnesses have thus been on the rise.

25. WFP has highlighted three groups as particularly food insecure: the socially vulnerable, including in institutional care, the elderly and children in paediatric wards; the physiologically vulnerable, including pregnant and lactating women, children under the age of five and adolescents; and the geographically vulnerable, particularly people living in the northeast and the south. Immediate food needs are closely related to the need for fertilizers and fuel.

26. United Nations agencies act on the basis of "no access, no food", meaning that if they do not have access to the areas concerned, food aid will not be given. A recurrent challenge is the distribution monitoring process. Interestingly, the report by the External Auditor on World Food Programme activities in the country (WFP/EB.2/2007/5-F/1 27 August 2007) noted the following challenges:

(a) The Government of the Democratic People's Republic of Korea required advance notice of planned food monitoring visits;

(b) World Food Programme monitors were not provided with unrestricted access to field operations, limiting the assurance obtained regarding the type of beneficiary and the quantities of food consumed;

(c) Interviews were conducted by non-Korean speaking WFP staff through an interpreter in the presence of Government officials (para. 47).

27. The External Auditor recommended that the World Food Programme ... critically review the reliability of food monitoring statistics and continue efforts to extend field monitoring agreements to support unrestricted access wherever possible, to include interpreters (para. 49, p. 17). As seen in the recent food security assessment mentioned above, currently greater access by WFP and other staff to the field opens the door to a more comprehensive and more transparent appraisal of the situation.

28. From that perspective, it is important to underline the need to generate food security in the country, for which foreign aid cannot be a substitute. That is closely linked with the need for a sustainable development process based on broad grassroots participation in income and food generation, conservation and regeneration. The types of practical programming needed include measures to deal with pre- and post-harvest losses, conservation of watershed areas, avoidance of deforestation and popular participation in planning and benefiting from agricultural development.

C. Rights and freedoms: the insecurity factor

29. Civil and political rights are severely constrained in the country owing to the repression imposed by the regime, creating insecurity among the general population. In that context, the authorities tend to divide the population into three different groups: those close to the regime, the group in the middle, and those considered hostile to the regime according to the Korean Institute for National Unification.[3] The first group is the ruling elite, which is endowed with privileges such as access to special schools and hospitals. They are allowed to own private phones and read foreign publications. The majority of the population, such as farmers and workers, makes up the second group. They are provided with food rations, although they have dwindled in recent years owing to Government experimentation with a market economy and reduction of the State-sponsored public distribution system. Members of the third group are considered enemies of the State and are persecuted accordingly. They include those who were members of the landed class before the Communist takeover of the country, public officials under Japanese rule, members of religious groups and those who assisted the forces of the Republic of Korea during the Korean War (1950-1953). They are denied access to college education and are discriminated against in their access to basic necessities, such as housing and medical care. Many end up in prisons, living in appalling conditions. When people are punished for political reasons, there is also use of collective punishment or punishment of families for guilt by association.

30. Political participation in the democratic sense is non-existent, with the ruling party in absolute control. There is rigid control over the media, and people are not allowed to own mobile phones or computers without the permission of the authorities. The Korean Institute for National Unification has reported a crackdown on cellphones.[3] Some inhabitants clandestinely watch video and television programmes from the South, but in 2008 there have been reports of crackdowns on videos from the Republic of Korea. It appears from information received that the authorities have imposed restrictions on long distance telephone calls, allegedly to block the spread of news concerning the current food shortage.

31. Of particular concern is the use of public executions to intimidate the public, despite various legal reforms in 2004 and 2005 that, it is claimed, have improved the criminal law framework and related sanctions. Overhaul of the prison system is long overdue, and the harsh conditions imposed by the criminal justice system and related detention give rise to a plethora of abuses, including torture and cruel, inhuman and degrading treatment. The abuses are ubiquitous, and include degrading treatment of deceased persons.[6]

32. *Amnesty International Report 2008*[7] summarizes the situation as follows:

> "Systematic violations of human rights continued, including capital punishment, torture and the political and arbitrary use of imprisonment. Dissent of any kind, including leaving the country without permission and unauthorized assembly or association, was severely punished and national and international media were strictly controlled. Access by independent human rights monitors continued to be denied."[7]

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[6] D. Hawke, *Concentrations of Inhumanity*, Freedom House (Washington, D.C., 2007).

[7] See http://thereport.amnesty.org/eng/Regions/Europe-and-Central-Asia/Turkey.

33. While the authorities claim that freedom of religion is respected, the situation indicates otherwise, with rigid control over those professing their religious beliefs.[8] It is reported that security personnel are ever present among religious congregations to report on their activities and that the authorities use persons disguised as religious personnel to monitor religious practices. Persecution of those professing their faith is pervasive, with families sent to prison for adhering to religious beliefs. It is also well known that those who seek the help of religious personnel in other countries in the quest for asylum are likely to be punished severely if sent back to the country of origin. Religion is thus seen by the authorities as a competitor and a threat to the personality cult practiced through the prism of top-down indoctrination.

34. On another front, the authorities have been engaged in abductions of foreign nationals. There are some 17 listed cases of Japanese in such situations, although 5 have been returned to Japan from the Democratic People's Republic of Korea. Nationals of a range of other countries have also been affected. The six-party talks have opened the door to bilateral talks between the Democratic People's Republic of Korea and Japan on steps towards normalization of relations, an important component of which is to resolve the abductions issue clearly and transparently. The most recent consultations between the two countries were held in June 2008, with the Japanese delegation requesting that all abductees be returned to Japan, that a full account of the victims be provided and that those responsible for the actions be extradited. The Democratic People's Republic of Korea responded by committing to reinvestigate the cases. It is hoped that the latter will respond substantively, constructively and expeditiously on that long-standing issue.

D. Displacement and asylum: the (im)mobility factor

35. Since its inception, the regime has regulated migration stringently as an instrument of State control. Generally, people are not allowed to move freely within the country and are able to travel abroad only with official permission. On another front, in mid-2008, it was reported that the authorities were compelling various groups, including the elderly, to leave Pyongyang around the time of important events. That would render them vulnerable to deprivation, particularly in the conditions of the current food shortage.

36. In recent years, the policy of immobility has been diluted, since many people have been displaced for political or economic reasons. On the one hand, a large number of those who are persecuted by the regime have sought refuge outside the country. On the other hand, people are also on the move within the country and across the border in search of basic necessities and improved livelihood. It has thus become more difficult for the authorities to exert full control over migration. There is also an incipient stream of workers and migrant labourers who travel to special economic zones inside the country or across the border to other countries as part of bilateral arrangements on labour importation.

37. With regard to asylum and refuge, the Special Rapporteur analysed at length the status of those who seek asylum in other countries in his previous reports (see

[8] *A Prison Without Bars: Refugee and Defector Testimonies of Severe Violations of Freedom of Religion or Belief in North Korea*, United States Commission on International Religious Freedom (Washington, 2008).

A/HRC/4/15 and A/62/264). Suffice it to state here that there are those who leave the country of origin for reasons of persecution (traditional refugees) and those who fear persecution after having left the country (refugees *sur place*). Both types are found among people from the Democratic People's Republic of Korea. The latter group exists because its members may be punished upon return for having left the country without permission (an exit visa), and that threat of prosecution is tantamount to potential or actual persecution, albeit at a later stage.

38. The situation facing those who seek refuge abroad remains precarious for a number of reasons.[9] First, more restrictions have been imposed during the past year on exit from the country and entry into neighbouring areas. There are reports of more severe sanctions imposed on those seeking to leave the country and also on those forcibly returned to the country,[10] despite possible indications of a more lenient attitude on the part of the authorities a couple of years ago. Some sources report a "shoot on sight" policy in regard to those who seek to leave the country clandestinely, in addition to violence against pregnant women forcibly returned to the country. Also, instead of the previous practice of imposing fines, prison sentences are now being applied. Bribing the relevant officials may mitigate some of the sanctions. Second, there are indications that asylum-seekers are being apprehended through the promise of rewards (bounties) offered by the local authorities in an asylum country to help identify them, with a view to forcibly returning them to the country of origin. Third, more severe punishments for those offering asylum across the border are now being threatened.

39. The scenario is all the more complicated owing to the following features. First, owing to the more restrictive border conditions and the fact that it has become more difficult for groups to access asylum in some of the neighbouring countries, those who reach those countries tend to depend on smugglers, with the promise of large sums to change hands in the process. Second, there is a difference between those who left the country a while ago and resided in a neighbouring country for several years before moving on to another country, and those who exited recently and headed for an asylum country, transiting briefly through a neighbouring country. With regard to the former, there is the question of whether those who resided in the neighbouring country for a long period, for example, over 10 years, should be eligible for resettlement in a third country. Perhaps the best test is to ask whether the person is protected by the country of origin and/or by the country of residence. If not, the door to resettlement in another country should be open to the person in question.

40. With regard to both the long-standing residents and the newcomers, there is, regrettably, the threat that they will be prosecuted for illegal entry in some of the countries of refuge. The Special Rapporteur has emphasized in his reports that they should not be prosecuted and should not be treated as illegal immigrants. Rather, they should be treated as asylum-seekers or refugees deserving international protection. A possible characterization on that front would be to treat them as humanitarian cases, not subject to the strictures of the immigration laws of the countries where they seek asylum. It is worth remembering that conceptually there

[9] P. Cammarota, J. Crace, K. Worly and H. Saltzman, *Legal Strategies for Protecting Human Rights in North Korea*, Skadden, Arps, Meagher & Flom LLP & Affiliates and U.S. Committee for Human Rights in North Korea (November 2007).

[10] *North Korea Today*, No. 114 (March 2008).

is a difference between refugees and illegal immigrants: while the latter are still protected by the country of origin, the former are not and should thus be afforded international protection.

41. Third, there is the question of the status of children born in other countries to one or more parents from the Democratic People's Republic of Korea. In a case where the parent is living clandestinely in the country where the child is born, it is often difficult to register the birth of the child, unless a special deal is agreed upon (possibly illicitly) with the authorities. There is also the question of the nationality of the child. Given that everyone from the Democratic People's Republic of Korea is in principle viewed by the law of the Republic of Korea as a citizen of the Republic of Korea, would the same apply to a child of nationals of the Democratic People's Republic of Korea born outside the Democratic People's Republic of Korea? The approach of the Special Rapporteur is to invite responses aimed at ensuring that the child does not become stateless.

42. Fourth, there is the question of family reunification. In the process of exodus or flight, families are often dispersed, with both or one of the parents leaving first, in the hope that one day they will be joined by the rest of the family. Family reunion of nationals of the Democratic People's Republic of Korea often takes place subsequently, which does not give rise to major problems in situations where the husband, wife and child are all nationals of the Democratic People's Republic of Korea born in the Democratic People's Republic of Korea. However, matters are more complicated when a national of the Democratic People's Republic of Korea marries a national of another country and gives birth to a child after that. Any hope of family reunion for the latter would depend upon flexible bilateral and other negotiations to enable family reunion to take place, without too many preconditions.

43. In reality, matters may be even more convoluted; often the displacement involves a mixed or composite flow, with a variety of reasons for the exodus, including political, economic and other factors. That can be further complicated by human trafficking and smuggling, whose practitioners often prey on those who are already vulnerable. Thus, a humane response is invited from all countries, to respect the human rights of those who are displaced, whatever their designation and however they are classified. Particularly concerning the refugee, there is a key principle of international law that prohibits forced removal to areas of danger ("non-refoulement"), an imperative to be respected. In that regard, it is important to reinforce the work of the Office of the United Nations High Commissioner for Refugees to exercise its mandate in all relevant situations, with effective access to those who are in need of international protection. The Special Rapporteur is in contact with that Office in a mutually supportive manner under their respective mandates.

44. With regard to workers and migrant labourers, it is important to highlight the need to respect labour rights, such as fair wages, the right to collective bargaining and freedom of association, the right to send remittances home and humane working conditions. Regrettably, the country has not yet engaged with the International Labour Organization (ILO), and it needs to join ILO conventions and implement them well at the national and local levels.

E. Groups of special concern: the inequality factor

45. Like the constitutions of many other countries, the Constitution of the Democratic People's Republic of Korea lays down the principle of non-discrimination and equality, particularly between men and women. Yet, while women constitute the majority of the workforce, their access to key decision-making positions is still limited. In addition to stereotyped roles for women, an issue that has not been addressed adequately in the national setting is violence against women. It varies from home-based violence to State-linked violence.

46. The situation has thus become critical in recent years in the face of food shortages, compounded by other deprivations such as lack of medicines and clean water. Of particular concern is women who are not part of the elite and are often disadvantaged in their access to food and other necessities. Those who are seen as enemies of the regime are subject to persecution and marginalization.

47. Attention should be paid to those women who leave the country in search of asylum and are often subjected to human trafficking and smuggling. The Special Rapporteur has talked directly with many such women, some of whom were sold into forced marriage in a neighbouring country before moving on to seek refuge elsewhere. The reasons why criminals prey on that group were referred to in the previous reports of the Special Rapporteur, and include the pretext of family reunion, and the belief that women keep their promise to pay up more conscientiously than men and that they are less likely to be prosecuted for illegal entry into another country (see A/HRC/4/15, para. 30, and A/62/264, para. 42).

48. What of refugee women who wish to marry in the final resettlement country? A new law in the Republic of Korea now allows for that, and it remains to be seen how many will make use of the opportunity.

49. With regard to child rights, a recent self-assessment by the country is contained in the country's consolidated third and fourth reports submitted under article 44 of the Convention on the Rights of the Child (see CRC/C/PRK/4). Of note is the range of new plans and laws that has come into existence in recent years, which includes the 2005 law on tobacco control, which prohibits the sale of tobacco to minors; 2004 and 2005 amendments of the Criminal Code and Criminal Procedure Code to offer clearer categorization of criminal offences; and the 2004 family law affording protection to mothers and children. The country has formulated a national programme of action for the well-being of children 2001-2010, reflecting some of the Millennium Development Goals. There are also the following: a national plan for action on education for all for the period 2003-2015, the Strategy for the promotion of reproductive health 2006-2010, a work programme for the protection of persons with disabilities for the period 2008-2010 and a primary health-care strategy for the period 2008-2012. International agencies indicate receiving good cooperation from the authorities on some fronts, such as with regard to vaccination against measles.

50. There remains the challenge of implementation against the backdrop of international standards, and the looming political penumbra that manipulates child development as part of the survival strategy of the regime in power. Assessing the implementation of child rights against the hierarchical and stratified nature of the political system is of particular importance; obviously, those who are not part of the elite are more susceptible to discrimination. They include street children, hungry for

help and sustenance, known as the Khojetbis. Matters grow more complicated if they leave the country of origin for refuge elsewhere. The report recently submitted by the Government of the Democratic People's Republic of Korea to the Committee on the Rights of the Child (CRC/C/PRK/4) is decidedly thin in regard to the special protection measures needed to address the particular concerns of children in difficulties, such as refugee children, children of political dissidents, children of minorities, abused or neglected children and children who are in conflict with the authorities. There is an urgent need to improve the criminal justice system as it affects children, bearing in mind international juvenile justice standards, particularly in view of reports that children allegedly involved in crimes are being tried publicly,[11] without respect for their privacy and best interests. That is related to the question of prisons and detention facilities as a whole.

51. Elderly persons are also increasingly vulnerable to the mounting deprivations, given the food and economic uncertainties in the country. The plight of those with disabilities is similar.

F. Consequences of violence and violations: the impunity factor

52. In retrospect, through the reports of the Special Rapporteur and other sources, it is clear that there have been and are serious human rights violations in the country. It is incumbent upon the national authorities and the international community to address the impunity factor, which has enabled such violations to exist and/or persist for a long time.

53. The softer entry point to deal with the misdeeds of local officials is to make them more accountable at the national level. That may be taking place in situations where law enforcers and others are prosecuted for crimes committed against the population. However, care should be exercised to test such actions from the standpoint of international standards. Given the non-independent nature of the judiciary in the country, it is difficult to ensure that justice is done and that is being seen to be done.

54. The harder entry point is to advocate for more accountability in the international setting, whether in terms of State responsibility or individual criminal responsibility. The fact that the mandate of the Special Rapporteur was established in 2004 may be seen to be part and parcel of that trend, which militates against impunity and emphasizes the accountability of those who should be responsible for human rights violations. That is reiterated and advanced by United Nations resolutions, particularly General Assembly resolutions on the country in question, which exert graduated pressure for accountability. Yet, the question remains whether the issue of violations in the Democratic People's Republic of Korea will be taken up at some stage at the pinnacle of the system, within the totality of the United Nations framework.

55. As noted in the previous report of the Special Rapporteur, civil society has begun to advocate the responsibility of the authorities for human rights violations, with possible resort to the Security Council and a non-binding resolution, as part of

[11] *North Korea Today*, No. 177 (July 2008).

the responsibility to protect the people.[12] There may also be avenues for mobilizing action for individual criminal responsibility, inspired by the presence of the International Criminal Court, where the local system is unable or unwilling to act to make individuals accountable for serious crimes.

56. The above actions are part of the multilateral framework for accountability. Another entry point is to examine whether other arrangements, regional, bilateral or mixed, may be possible to advocate a sense of responsibility to counter the impunity factor. On a more facilitative side, it is regrettable that the country has not sought assistance from the Office of the United Nations High Commissioner for Human Rights to improve its justice system and human rights implementation. Given that the six-party talks mentioned earlier are currently also dealing with some aspects of human rights through bilateral and other tracks, such as a possible peace treaty for the Korean peninsula that could cover the question of missing persons and separated families and the issue of abductions committed by agents of the Democratic People's Republic of Korea, there may be additional space to influence more effective implementation of human rights in the national setting.

57. It will also be interesting to see how the country engages with the new universal periodic review system under the Human Rights Council. The Special Rapporteur invites the system to take his analysis and recommendations into account effectively and substantively as part of the dialogue and follow-up process, in addition to the possible entry points for technical cooperation with the United Nations to improve the situation on the ground.

58. While much depends upon global and local political will to test the desire of the Democratic People's Republic of Korea for transparency and responsibility, whether through softer or harder entry points, it is important to underline the long-standing and systematic nature of human rights transgressions in the country, which are highly visible, substantial and exponential.

III. Communications

59. The Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea, together with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the right to food, sent a joint communication to the Government of the Democratic People's Republic of Korea on 20 March 2008 concerning the alleged public executions of 15 nationals of the Democratic People's Republic of Korea. The 13 women and 2 men were reportedly accused of planning to cross over to a neighbouring country to receive economic assistance with the help of relatives living abroad. The Government of the Democratic People's Republic of Korea did not reply to the communication.

60. The Government of the Democratic People's Republic of Korea also did not reply to a communication, sent by the Special Rapporteur on 7 April 2008, seeking clarification on the whereabouts and the safety of 22 nationals of the Democratic

[12] See *Failure to Protect: A Call for the UN Security Council to Act in North Korea*, U.S. Committee for Human Rights in North Korea (Washington, 2006); *North Korea: A Case to Answer — A Call to Act*, Christian Solidarity Worldwide (London, 2007).

People's Republic of Korea. The group, comprising 14 women and 8 men, among them 3 teenagers, was returned to the Democratic People's Republic of Korea after they reportedly drifted to Southern waters in the Western Sea near Yongpyong Island by accident.

IV. Recommendations

61. Given that the human rights situation in the Democratic People's Republic of Korea remains grave on several fronts, it is essential to press for concrete actions to address the various challenges described in the present report in an expeditious and effective manner.

62. The Democratic People's Republic of Korea should take the following measures:

(a) Immediately (short-term):

(i) Ensure effective provision of and access to food and other basic necessities for the people of the country, and cooperate constructively with United Nations agencies and other humanitarian actors on the issue;

(ii) End the punishment of asylum-seekers returned from abroad;

(iii) Terminate public executions and other abuses against the security of the person;

(iv) Cooperate transparently and accountably to resolve the issue of foreigners abducted by the Democratic People's Republic of Korea;

(v) Invite the Special Rapporteur to the country to assess the human rights situation on the ground and to advise on needed improvements;

(b) Progressively (longer-term):

(i) Ensure a more equitable development process in the country; implement human rights effectively and comprehensively, bearing in mind that it is party to four human rights treaties; and transfer resources from the militarization process to the social development sector;

(ii) Overcome disparities in access to food and other basic necessities, and build food security through sustainable agricultural development with broad-based people's participation;

(iii) Guarantee the security of the human person by modernizing the national system, reforming prisons and abiding by the rule of law, such as ensuring safeguards for accused persons, fair trials and the development of an independent judiciary;

(iv) Adopt a clear policy not to punish those who leave the country without permission, amend the law and train the relevant officials accordingly;

(v) **Address the root causes of refugee outflows; criminalize those who exploit them through human smuggling, trafficking and extortion, while not criminalizing the victims; accede to international treaties on the issue;**

(vi) **Become a party to the conventions of the International Labour Organization and implement them effectively;**

(vii) **Protect the rights of women, children and other groups, particularly by overcoming the inequalities and discrimination facing them;**

(viii) **Address impunity for violence and violations, ensuring that those who should be accountable are brought to justice;**

(ix) **Request technical assistance from the Office of the United Nations High Commissioner for Human Rights to help promote and protect human rights in the country;**

(x) **Engage transparently and sustainably with the treaty bodies to which the Democratic People's Republic of Korea is party, with effective follow-up on recommendations and access to the country.**

63. **The international community is invited to take the following measures:**

(a) **Emphasize more strongly the need for participatory, sustainable and equitable development in the country and highlight strategies for food security, while continuing to ensure that humanitarian aid reaches the target groups ("no access, no aid"), including through effective monitoring;**

(b) **Respect the rights of refugees, particularly the principle of non-refoulement, abide by the human rights of migrants, and mitigate the strictures of national immigration laws that might otherwise lead to the detention of refugees or asylum-seekers;**

(c) **Maximize dialogue with the Government of the Democratic People's Republic of Korea to promote dispute resolution, and enlarge the space for human rights discourse and action, with relevant packages of incentives and graduated pressures, possibly linked with security guarantees, as appropriate;**

(d) **Ensure a calibrated approach within the United Nations so as to utilize the leverage throughout the United Nations system to influence positive changes in the country;**

(e) **Address the impunity factor through a variety of entry points, whether in terms of State responsibility or individual criminal responsibility.**